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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/066,205	06/27/2002	Thomas E. Dungan	DTE-101-C	5321

7590

07/27/2004

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Farmington Hills, MI 48334

EXAMINER

FARAH, AHMED M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 07/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/066,205

Applicant(s)

DUNGAN, THOMAS E.

Examiner

Ahmed M Farah

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Note:

In this Office Action (OA), the "Shakra energy" or 'Chakra energy' is defined as 'one of the seven centers of spiritual energy/colors in the human body according to oriental/yoga philosophy'¹. Furthermore, 'Shakra' or 'Chakra' colors are defined as seven colors such as red, orange, yellow, green, blue, indigo, and purple (see <http://www.geocities.com/CapeCanaveral/8430/sprit.htm>).

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are again rejected under 35 U.S.C. 102(b) as being anticipated by Dungan U.S. Patent No. 5,591,219.

Dungan discloses a therapeutic radiation device as claimed, the device comprising all of the limitations of the instant claims, including a plurality of different/interchangeable lens modules (see lines 5-7 of the abstract), each lens module having a plurality of silicon and diamond granules attached to each other (col. 5, lines

¹ The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation.

17-23). He further teaches that the lens modules have different colors so as to vary the wavelengths of the light/radiation applied to the treatment areas (see Col. 5, lines 36-38).

As to the recitation '**each lens module having a color corresponding to a Shakra energy center**' in the claims, the lens modules of Dungan have different colors such as red, orange, yellow, green, blue, purple, white, or any other color that is translucent (see Col. 5, lines 36-38). Hence, the examiner's position is that the colors of the lens modules disclosed by Dungan anticipate this limitation. That is, the colors of the lens modules of Dungan coincide with the colors of Shakra/Chakra energy centers.

As to the recitation "silicon dioxide" in claim 1, although Dungan does not particularly mention silicon dioxide (SiO_2), he clearly teaches that the silicon granules in his lens are, preferably, **sand** (see Col. 5, line 18). It is known that **sand** can be defined as 'grains or particles of disintegrated siliceous rock, chiefly of quartz'.² It is also known that SiO_2 (known as silica), is 'a white or colorless crystalline compound, occurring abundantly as **quartz**, **sand**, flint, agate, and many other minerals'.¹ Therefore, the examiner's position is that since sand comprises silicon dioxide, the lenses of Dungan inherently comprise silicone dioxide granules as presently claimed.

² Hackh's Chemical Dictionary, Third Edition, Copyright ©1944, by the McGraw-Hill Book Company, Inc.

¹ The American Heritage® Dictionary of the English Language, Third Edition copyright © 1992 by Houghton Mifflin Company. Electronic version licensed from INSO Corporation.

Response to Arguments

Applicant's arguments filed December 1, 2003, have been fully considered but they are not persuasive. The applicant makes the following arguments:

A. The applicant argues that the Dungan patent ('219) fails to teach plurality of interchangeable lenses as recited in the instant claims. To support his argument, he relies on item # 9 of the Office Action of August 29, 2003 (the section that addresses the nonstatutory double patenting rejection, see page 6 of the OA). Referring to this section of the OA, Applicant states that "The Examiner has conceded in the last Office Action that the '219 reference **does not claim** the plurality of interchangeable lens modules but, rather, claims only a single lens module."

In response to this argument, the applicant is indeed correct that the patent of Dungan ('219) claims only a single lens module. The section of the OA referenced by the applicant addresses the double patenting of the claims. Therefore, this section of the OA is limited only to, and compares of, what is claimed on the US patent and the instant application.

However, when examining anticipation of the claims, the full disclosure of the US patent is considered in view of the recited limitations. Thus, Dungan clearly discloses a plurality of different lens modules used with the radiation device (see lines 5-7 of the abstract). He further teaches that these lens modules "may be different colors such as red, white, blue, green, orange, purple, yellow, or any other color that would be translucent" (see col. 5, lines 36-38). Hence, the Examiner's position is that Dungan clearly teaches the use of plurality of different lens modules as presently claimed.

B. the applicant argues that "there is absolutely no teaching, disclosure or suggestion within the reference of a plurality of interchangeable modules of colors according to the Shakra energy centers. The reference is silent to this respect thereto." Furthermore, although the applicant admits that the reference teaches lens modules having "select colors that may be used," he nevertheless argues that "there is no teaching, disclosure or suggestion of correlating the colors to the Shakra energy centers."

In response to this argument:

- a) first of all, the applicant admits that Dungan teaches the use of different color lens modules;
- b) secondly, Dungan clearly teaches that these colors may be red, white, blue, green, orange, purple, yellow, or any other color that would be translucent; and
- c) last but not least, 'Shakra' or 'Chakra' colors are defined as seven colors such as red, orange, yellow, green, blue, indigo, and purple (see <http://www.geocities.com/CapeCanaveral/8430/sprit.htm>).

Therefore, the Examiner's position is that although Dungan does not specifically correlate the colors to Shakra energy centers, his colors match and coincide with the defined colors for Shakra energy centers. Hence, Dungan clearly anticipates the use of plurality of lens modules, each lens module having a color corresponding to a Shakra energy center as presently claimed.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

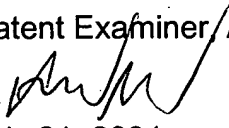
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ahmed M Farah whose telephone number is (703) 305-5787. The examiner can normally be reached on Mon-Thru. 9:30 AM-7:30 PM, and 9:30 AM - 6:30 PM on every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M DVorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A. Farah,
Patent Examiner/AU 3739


July 21, 2004.